



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF V-E-D-J-C-

DATE: JAN. 2, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a guitarist, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he met three of the ten initial evidentiary criteria but that he did not establish eligibility in the final merits analysis.

On appeal, the Petitioner submits additional evidence and contends that he qualifies as an individual of extraordinary ability.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner is a guitarist. The record reflects that from 1990 to 2000, he was the lead guitarist for the Philippine band [REDACTED]. The band then took a hiatus in 2000 until regrouping in 2005, this time without the Petitioner as a member. The record demonstrates that he rejoined the band as its lead guitarist in 2016.

### A. Substantial Benefit and Continuous Work in the Area of Extraordinary Ability

As an initial matter, the Acting Director held that because the Petitioner was recently unemployed and doing pro bono work as a guitarist after reuniting with Introvoys, he had not established that he would work to substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act states that the petitioner must show that he seeks to enter the United States "to continue work in the area of extraordinary ability" and that his entry "will substantially benefit prospectively the United States." The regulation at 8 C.F.R. § 204.5(h)(5) states that "the petition must be accompanied by clear evidence that [the petitioner] is coming to the United States to continue work in the area of expertise," noting that such evidence may include a statement "detailing plans on how he or she intends to continue his or her work in the United States." We note that the Petitioner's statement in the record demonstrates that while he did not receive compensation for the shows in which he had performed, his intent was to work in his field of expertise by returning to the Introvoys as the lead guitarist. He states that the band had been raising money for future tour expenses and to complete a studio. [REDACTED] the drummer for [REDACTED], indicates that members of the band will begin receiving compensation once the studio is completed. We find that this evidence, together with the Petitioner's statement, sufficiently establishes that he intends to continue working in the

area of extraordinary ability in a manner that will substantially benefit the United States to meet the requirements of section 203(b)(1)(A) of the Act. Therefore, we withdraw the Director's finding in this regard.

## B. Evidentiary Criteria

As the record does not establish that the Petitioner has received a major, internationally recognized award, he must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Acting Director held that the Petitioner met the following criteria: published material, judging, leading or critical role, and commercial successes at 8 C.F.R. § 204.5(h)(3)(iii), (iv), (viii), and (x), respectively, but that he had not met the criteria for scholarly articles, display, and high salary at 8 C.F.R. § 204.5(h)(3)(vi), (vii), and (ix). Ultimately, she concluded that the Petitioner had not established eligibility in the final merits analysis. Here, we find that the record supports the conclusion that he meets three criteria to warrant a final merits determination.<sup>1</sup>

Specifically, we disagree with the Acting Director regarding published material and find that the record does not establish that the Petitioner meets this criterion. The Petitioner asserts that interviews conducted by Filam Star and UNTV meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii). First, the record contains printouts from these websites with transcriptions of the interviews, but the record does not contain the dates of these interviews or proper translations of these documents as substantial portions of the interviews are in a foreign language. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Second, the questions asked are about [REDACTED] rather than focusing on the Petitioner individually in a manner that relates to his work in the field. The record does not contain evidence demonstrating Filam Star is major media or to establish that it is a professional or major trade publication to meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii). The other publications in the record, including the article from UNTV, are about [REDACTED] and not about the Petitioner. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the

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<sup>1</sup> The Petitioner cites 8 C.F.R. § 204.5(h)(4) and asserts that evidence of the songs he has written and the showcasing of his music in concerts constitutes comparable evidence that should be accepted instead of the scholarly articles and display criteria, which he claims do not readily apply to his occupation. The Acting Director held that 8 C.F.R. § 204.5(h)(4) is not applicable here because the Petitioner has met three criteria. The Petitioner contends that an O-1 nonimmigrant USCIS policy memorandum is instructive in this matter for the proposition that comparable evidence may be submitted if any of the criteria do not apply. The Acting Director held that memoranda for nonimmigrant visa classifications do not apply here. We agree. For the policy memorandum that is applicable to this matter, *see* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions: Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>. We also note that because the Petitioner has met three criteria, it is unnecessary for us to reach the comparable evidence issue. That said, in the final merits analysis we will consider the evidence of the songs the Petitioner has written and the concerts in which he has performed.

actor). In the few places where the Petitioner's name is mentioned, such as in articles from Smash! Magazine, the only details provided are about his biographical information and basic interests as part of the profiles of the band members. This does not constitute published material about him that relates to his work in the field as required under 8 C.F.R. § 204.5(h)(3)(iii). Therefore, the Petitioner has not shown that he meets this criterion.

We agree with the Acting Director that the Petitioner meets the criteria for judging, leading or critical role, and commercial success. For judging, the record indicates that in [REDACTED] Laguna, Philippines, the Petitioner was a judge for [REDACTED] in 2015 and the [REDACTED] singing contest in 2016, which satisfies the requirements of this criterion. Regarding leading or critical role, the record reflects that he meets this criterion as he was the lead guitarist for [REDACTED] for approximately ten years, co-writing some of the band's most successful songs and the record shows that the band is an organization with a distinguished reputation.<sup>2</sup> For commercial successes, the record demonstrates that the Petitioner, as a member of Introvoys, shared in the band's success in record sales achieving gold, platinum, double platinum, triple platinum, and quadruple platinum awards. This demonstrates that the Petitioner meets three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). Accordingly, we will evaluate the totality of the evidence in the context of the final merits determination below.<sup>3</sup>

### C. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the record demonstrates, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not established that he has sustained national or international acclaim.

For published material, the record contains articles from the 1990s in Smash! Magazine about the [REDACTED] with several articles that only mention the Petitioner as a guitarist for [REDACTED] with his profile and basic interests. While indicative of acclaim during the 1990s, the other publications in the record do not establish that he has enjoyed national or international acclaim from 2000 through 2016 when he rejoined the band.

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<sup>2</sup> Later in the decision, but prior to the final merits discussion, the Acting Director held that he did not meet the leading or critical role criterion, even though she held that he did meet this criterion at the beginning of the decision. Here, we clarify that the record establishes that he meets this criterion.

<sup>3</sup> As the Petitioner meets at least three criteria, we will discuss the evidence regarding each of the criteria he raises in the context of a final merits discussion. We will also discuss the evidence in the record of the Petitioner's song-writing ability and the showcasing of his music in concerts as part of the final merits discussion.

As stated above, the record lacks certified translations of the interviews of members of [REDACTED] published on the websites for Filam Star and UNTV, and it is unclear when these interviews took place or how widely viewed they were. We further note that these interviews discuss the success of the band in the 1990s and do not demonstrate that the Petitioner, as an individual, has enjoyed sustained national or international acclaim from 2000 onward. Documentation in the record from the Ranker website contains an article entitled, [REDACTED] which lists the [REDACTED] as number 26th. This ranking does not list individual members of [REDACTED] and the Petitioner has not shown how this demonstrates his sustained national or international acclaim from 2000 onward. Also, in an article from 8List.ph entitled [REDACTED] the '90s" [REDACTED] is ranked 8th, but this relates to the band's success in the 1990s. The Petitioner states that we should not disregard the published material about [REDACTED] simply because he was not a member at the time of publication, asserting that his acclaim is tied to the success of the original band. However, the record does not show what level of success the [REDACTED] had from its restructuring in 2005 onward, or that its success during this time brought national or international acclaim to the Petitioner. Therefore, the evidence in the record does not demonstrate that the Petitioner has sustained national or international acclaim while not being a part of [REDACTED] from 2000 to October 2016.

With respect to judging, the two certificates regarding the Petitioner's judging experiences for the [REDACTED] and the [REDACTED] singing contest demonstrate that these were local events for the City of [REDACTED]. The record does not reflect that he received any other recognition for his role in judging these contests outside of this city to constitute national or international acclaim.

Regarding the showcasing of the Petitioner's music in concerts, the record reflects that he was the lead guitarist for the [REDACTED] during the 1990s at the height of its success, but he has not shown how any concerts the band performed after his departure brought national or international acclaim to him. We note his first performance after reuniting with the band took place in February 2017. Even if he had shown that he again received national or international acclaim after rejoining [REDACTED] in 2016, or 2017 at his first concert as a reunited member of the band, this is not sufficient to establish sustained acclaim in the intervening period. The record contains reviews of concerts where [REDACTED] performed, but the evidence does not demonstrate when these concerts took place or if the Petitioner performed. Furthermore, the publications with these reviews appear to be blog posts that individuals have posted on the Internet, but it has not been established how widely these reviews have been viewed. . Therefore, this evidence has not established that the Petitioner has enjoyed sustained acclaim as a result of his performances with [REDACTED].

As to his leading or critical role and his song-writing abilities, [REDACTED] states that the Petitioner "has made valuable contributions into helping our collaborative efforts achieve what they were intended to do." He notes that their "most prominent collaboration, a song called [REDACTED] is still on current rotation in terrestrial radio in the Philippines." As stated above, we note the success the [REDACTED] had in the 1990s, but the Petitioner has not established how the current radio play of this song equates to his sustained national or international acclaim. It has not been

shown how much current radio play this song receives or to what extent the Petitioner has received acclaim for this from 2000 to 2016. While the record contains evidence of YouTube views of many of the songs of [REDACTED] it is unclear over what period of time these views took place, and the Petitioner has not shown how this amounts to national or international acclaim.

In a letter from [REDACTED] the lead guitarist for the Filipino band [REDACTED] during the 1990s, he states that the Petitioner “was the lead guitarist of the band when their greatest hits were released . . . making him an integral and intrinsic part of the band’s successful sound.” He indicates that [REDACTED] and [REDACTED] were among the most popular bands in the 1990s and had been in numerous occasions featured in the same shows or events.” He notes that “[the Petitioner’s] style is extraordinary insofar as creating melodic guitar ‘pyrotechnics’ that pulls inspiration from guitar legends Eddie Van Halen, Niel Schon, Yngwie Malmsteen and Jimi Hendrix while still maintaining his own unique musical sensibility, which in turn has made him an inspiration and hero to the next generation of Filipino guitarists.” Similarly, [REDACTED] the lead vocalist in the Filipino band [REDACTED] states that the Petitioner “is a true master of his instrument,” “[h]is sound is very distinct and his playing style, which clearly drew inspiration from other guitar icons, has blended so well” and “is now uniquely his.” [REDACTED] indicates that his “searing, melodic and sometimes anthemic guitar solos were something the audience anticipated.” We acknowledge the Petitioner’s expertise and his role as lead guitarist for [REDACTED] from 1990 to 2000, but the record does not demonstrate that he has had sustained national or international acclaim from 2000 until October 2016 when he reunited with [REDACTED]

Pertaining to high salary, the record contains a letter from [REDACTED] the former manager for [REDACTED] stating that the band earned 150,000 Philippine pesos (Php) per show during its popularity in the 1990s. The Petitioner has not provided corroborating evidence to substantiate the salary he earned during this time or how it compared to other bands. Even if this had been established, he has not shown how his salary contributed to his sustained national or international acclaim.

With respect to commercial success, the record contains a certification from [REDACTED] detailing the album sales for the [REDACTED] which include gold, platinum, double platinum, triple platinum, and quadruple platinum awards. While we acknowledge the commercial success of the [REDACTED] in the 1990s and the Petitioner’s role in the band during that time, the record reflects that the band took a hiatus in 2000 and that when the band resumed its activity, he was no longer part of it. In addition, he states that he left the music business in 2004 and the record reflects that he rejoined [REDACTED] in October 2016. He has not shown that he enjoyed commercial success in the field from 2000 to October 2016 that resulted in sustained national or international acclaim. In addition, the record does not demonstrate that the Petitioner has been commercially successful in the field since rejoining the band in 2016.<sup>4</sup>

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<sup>4</sup> Documentation from the [REDACTED] website indicates that in June 2013, the band went on a “successful, well-attended 16-month tour of different cities, states, and provinces in the U.S. and Canada,” but the Petitioner was not a member of the band at this time.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

**ORDER:** The appeal is dismissed.

Cite as *Matter of V-E-D-J-C-*, ID# 1846417 (AAO Jan. 2, 2019)